

(2004) 10 MAD CK 0088

In the Madras High Court

Case No : Criminal M.P. No. 3713 of 2001 in Criminal O.P. No. 19352 of 1998

State

APPELLANT

Vs

K.V. Rajendran and Others

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 157

Citation : (2004) 5 CTC 598

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : K. Doraisamy, P.P, for the Appellant; K. Doraisamy, Public Prosecutor for Respondent Nos. 2, 3, 4 and 5, Venkatesh, for Sudha Ramalingam, for Respondent No. 1, N. Chandrasekaran, Special Public Prosecutor for CBI for Respondent No. 6 and L. Subramanian, for S. Karthikeyan, for the Respondent

Judgement

This Judgment has been overruled by : State rep. by D.S.P., S.B.C.I.D., Chennai Vs. K.V. Rajendran and Others, AIR 2009 SC 46 : (2009) CriLJ 355 : (2008) 230 ELT 577 : (2008) 10 JT 392 : (2008) 12 SCALE 160 : (2008) 8 SCC 673

M. Karpagavinayagam, J.—This is an application filed by one Mr. Martin, Deputy Superintendent of Police, SB CID, Headquarters, Chennai, in CrI.M.P. No. 3713 of 2001 seeking for modification of the order passed by this Court in CrI.O.P. No. 19352 of 1998 directing for registration and investigation by the D.S.P., CB CID, Nagapattinam, instead of the D.S.P., SB CID, Nagapattinam.

2. This case has got a chequered history. Before considering the issue raised in this matter, let us look into the chronological events:

"(a) K.V. Rajendran, working as a Senior Lecturer in Physics Department in Presidency College, Chennai, filed a petition before this Court in CrI.O.P. No. 19352 of 1998 to direct the respondents-police officials to register an F.I.R. based on the complaint dated 2.9.1998 given by him against one Karunakaran, the then Revenue Divisional Officer (hereinafter referred to as "R.D.O."),

Mayiladuthurai and other officials for having abducted and tortured the said Rajendran and other illegal acts committed by them between 26.8.1998 and 28.8.1998 and consequently, transfer the further investigation of the case to the Central Bureau of Investigation (hereinafter referred to as "C.B.I.") and order for payment of compensation.

(b) After hearing all the learned counsel for all the parties concerned, this Court passed an order on 1.3.2001, directing the D.S.P., SB CID, Nagapattinam District to register F.I.R. against the said Karunakaran on the basis of the complaint of Rajendran dated 2.9.1998 and take suitable action against the persons concerned in accordance with the procedures contemplated under law and continue the investigation and file the final report.

(c) This Court while passing the said order felt that it is unnecessary to transfer the investigation to C.B.I, and consequently, rejected the request for transfer of investigation to C.B.I. as well as the claim for compensation.

(d) Instead of complying with the order dated 1.3.2001, the D.S.P., SB CID, Head Quarters, Chennai, Mr. T. Martin filed a petition before this Court on 15.6.2001, i.e. after nearly about three months in Crl.M.P. No. 3713 of 2001 seeking for modification stating that the post of D.S.P., SB CID in the Districts had been abolished and therefore, the D.S.P., CB CID, Nagapattinam may be directed to register the complaint and investigate the case, by modifying the said order.

(e) Curiously, this petition was not brought before this Court. Instead, the Registry posted the same before Justice Malai Subramanian, who entertained the same and ordered notice on 28.6.2001 and again by the order dated 18.7.2001, it was posted after two weeks ordering for awaiting of the service of notice. Unfortunately, for the reasons best known to the concerned, the said petition in Crl.M.P. No. 3713 of 2001 was not posted thereafter either before this Court or before any other Court. Ultimately, the matter was posted only on 9.7.2004 before this Court, i.e. after about three years. Admittedly, till then, there was not even attempt to comply with the order of this Court dated 1.3.2001.

(f) The learned Public Prosecutor argued on behalf of Mr. Martin, D.S.P., SB CID, Head Quarters, Chennai, and sought for the said modification without giving any explanation for the delay. On noticing that the order of this Court dated 1.3.2001 has not been complied with and has been disobeyed by the officer concerned, this Court by the order dated 9.7.2004, directed Mr. Martin, D.S.P., SB CID, Head Quarters, Chennai and Mr. Sethunathan, D.S.P., SB CID, Nagapattinam, to give explanation for their inaction and for non-compliance of the order. The gist of the order dated 9.7.2004 is as follows:

"This is an application seeking for modification of the order dated 1.3.2001 passed in Crl.O.P. No. 19352 of 1998 to the effect that the D.S.P., CBCID, Nagapattinam may be directed to register and investigate the case, instead of the D.S.P., SBCID, Nagapattinam.

Mr. T. Martin, D.S.P., SBCID, Head Quarters, Chennai has filed the affidavit dated 15.6.2001, even without attestation by an Advocate.

Even though this affidavit has been filed on 15.6.2001 and the petition has been numbered as CrI.M.P. No. 3713 of 2001, the same has been brought before this Court only in 2004, i.e. today (9.7.2004).

The affidavit filed by Mr. Martin, D.S.P., SB-CID would show that the order which had been passed on 1.3.2001 in the CrI.O.P. No. 19352 of 1998 has been received by him only on 1.6.2001. This application, has been filed in the Registry only on 15.6.2001.

Thus, it is clear that this Court's order dated 1.3.2001 in the said CrI.O.P., has not been complied with. There is no reason for the D.S.P., SBCID as to why he had failed to hand over the investigation to the CBCID agency. Having filed this affidavit before this Court on 15.6.2001, seeking modification, no steps have been taken to get modification or clarification of the order earlier passed.

This Court feels that the order of this Court has not been complied with by the fourth respondent herein.

Therefore, issue notice to both Mr. Martin, D.S.P., SB-CID, Head Quarters, Chennai, who has filed the affidavit and Mr. Sethunathan, D.S.P., SBCID, Nagapattinam District, who is the fourth respondent herein, to explain as to why the order of this Court dated 1.3.2001 has not been complied with still."

(g) After passing this order, the matter was adjourned.

(h) As directed by this Court, Mr. Martin, D.S.P., SB CID, has filed an affidavit dated 19.8.2004 before this Court, giving the explanation. The gist of the explanation is as follows:

"Though the order was passed on 1.3.2001 by this Court, he received the order copy only on 1.6.2001. As per G.O. Ms. No. 897 Home (Police-II), Department dated 17.5.2000, the D.S.P., SB CID posts in various Districts were abolished and as such, there was no post of D.S.P., SB CID on the date of the order, i.e. on 1.3.2001. Further, as per Rule 57 of the Manual of Instructions for State Special Branch, the Special Branch Officers are not to conduct the investigation of the cases. Therefore, he filed an application for modification in CrI.M.P. No. 3713 of 2001 on 15.6.2001. He was informed by the Office of the Public Prosecutor that intimation will be given to him as and when the above petition is listed for hearing."

(i) Mr. Sethunathan, D.S.P., SB CID, as directed by this Court, has filed an affidavit on 19.8.2004 giving the explanation. The crux of the explanation is as follows:

"Sethunathan worked as D.S.P., SB CID, Nagapattinam only till 1.7.2000. Thereafter, this post was abolished. On 14.12.2000, he was posted as D.S.P., Samayanallur Sub Division, Madurai District. In fact, he only conducted discreet

enquiry into the allegation of assault on illegal detention of Rajendran by Karunakaran, R.D.O. and after finishing the enquiry, he submitted his report on 27.9.1998 to the Superintendent of Police, SB CID, Chennai, finding that there are prima facie materials against Karunakaran, R.D.O. As such, when the final order was passed on 1.3.2001, he was not holding the post of D.S.P., SB CID at Nagapattinam."

(j) Pending the enquiry before this Court, after receipt of the orders seeking for explanation from the police officials, the ADGP, CB CID passed an order on 21.7.2004 directing the Inspector, CB CID, Nagapattinara to register the case and hand over the investigation to D.S.P., CB CID. Accordingly, the complaint which was given by the said Rajendran was registered in Crime No. 1/94 for the offences under Sections 147, 148, 323, 324, 326, 348 and 506(ii), I.P.C. by the Inspector and the D.S.P., CB CID, Trichy took up investigation on 22.7.2004.

(k) Thereafter, the D.S.P., CB CID conducted investigation and examined witnesses. The said Rajendran and witnesses, while examined, were treated harshly and Rajendran was compelled to withdraw the complaint against Karunakaran, R.D.O. When Rajendran felt that himself and witnesses were again harassed by the officials, he handed over a written representation to the Superintendent of Police, CB CID, Chennai on 2.9.2004 reporting about the harassment by the present Investigating Officer, the D.S.P., CB CID. Since there was no response, Rajendran filed a petition with an affidavit on 11.9.2004 before this Court to the effect that he was harassed by the present Investigating Officer and the investigation had not been conducted in an unbiased manner and therefore, investigation must be transferred to C.B.I., as prayed for by him earlier.

(l) The crux of the affidavit of Rajendran dated 11.9.2004 is as follows:

"Even though the detailed order dated 1.3.2001 has been passed by this Court directing for the registration of the complaint and investigation by the police, the police officials concerned did not take action. He did not incline to pursue the matter before this Court by filing a separate application as he had a hope that the investigation will be conducted soon as per the orders of the High Court. But, he came to know that the order has not been complied with and only after the orders passed by this Court on 9.7.2004, directing the SB CID officials to give explanation for their inaction, the case on the complaint given by him was registered by the CB CID police against Karunakaran. On 14.8.2004 and 17.8.2004, Rajendran was enquired in Poraiyar and Mayiladuthurai Police Stations by Ms. Shanthi, D.S.P., CB CID and other officials. While he was questioned, he was asked to give details as to whether he had made a phone call to the accused Karunakaran regarding teak wood smuggling. When he denied having made a phone call, instead of enquiring into the torture meted out at the hands of Karunakaran and about the human rights violations committed on him, the D.S.P. and Ors. began to pressurize him to withdraw the complaint against the accused telling that there is enough evidence to prove that he only made the phone call. When he felt that the investigation was biased; he was harassed and

compelled to withdraw the complaint, on 9.8.2004, he met Nallasivam, Superintendent of Police, CB CID, Chennai and gave a written complaint to him about the biased nature of enquiry. Thereafter, he was again enquired on 1.9.2004 by the same D.S.P., CB CID and he was asked to produce all the original certificates regarding the treatment obtained by him from one Dr. Neelamegam. Accordingly, the records were produced. Thereafter, his brothers, relatives and members of the Teachers Association were enquired by the police. They were compelled by the Investigating Officer to give statement to the effect that Rajendran was along with them on 26.8.1998 in the village. When the witnesses denied the same, they were harassed and warned that they would be implicated in false cases if they insist on continuing to give evidence against the accused. Further, Shanthi, D.S.P., CB CID is a close friend and junior of Hema Karunakaran who is currently posted as ADSP (S.I.T.), Coimbatore. The said Hema Karunakaran is none else than the wife of Karunakaran, the accused in this case. Giving details about this, Rajendran made another representation on 2.9.2004 to the Superintendent of Police, CB CID informing about the line of investigation and expressed his apprehension about the biased attitude of the D.S.P., CB CID. Now, Karunakaran, originally working as R.D.O., has been promoted as District Revenue Officer and is still holding the charge of the influential post of D.R.O., even though the case was registered against him. Till now, no effort has been made to arrest him nor interrogated him. As such, the case may be transferred to C.B.L"

(m) On perusal of this affidavit filed by Mr. Rajendran dated 11.9.2004, a report was called for from the D.S.P., CB CID, the present Investigating Officer. Accordingly, on 17.9.2004, the D.S.P., CB CID, Trichy has filed the report before this Court, the nut-shell of which is as follows:

(i) The case was registered on 21.7.2004 by the Inspector, CB CID, Nagapattinam as per the orders of ADGP, CB CID, dated 21.7.2004 for the offences under Sections 147, 148, 323, 324, 326, 348 and 506(ii), I.P.C. against Karunakaran.

(ii) On 22.7.2004, the D.S.P., CB CID, Trichy took up investigation and went to the village and examined witnesses. Since the complainant Rajendran was at Chennai, on 27.7.2004, the D.S.P., CB CID came to Chennai and examined the complainant. So far, 33 witnesses were examined.

(iii) The complainant and the witnesses were examined in the line of finding out the motive behind the assault on the complainant by the R.D.O. Karunakaran. The complainant and witnesses were examined with reference to the assault on Rajendran by the R.D.O. also. The audio cassette will be recovered from the accused during the course of investigation. The registration of the case against Karunakaran, the then R.D.O., Mayiladuthurai, who is presently working as D.R.O., Coimbatore, has been informed to the concerned superior authorities. The complainant was never compelled to withdraw the complaint."

3. I have heard the counsel for the parties and considered the rival contentions. I have also perused the records and the case diary produced by the D.S.P., CB CID, the present Investigating Officer.

4. At the outset, this Court is constrained to express displeasure over the conduct of the D.S.P., SB CID, Head Quarters, Chennai in not taking action for registration of the complaint forthwith as directed by this Court and also the conduct of the present D.S.P., CB CID in not conducting the investigation in an unbiased manner.

5. This is a case where SB CID probed into the matter over the complaint given by Rajendran and found prima facie materials to indicate that Karunakaran, R.D.O. abducted Rajendran who is working as a Lecturer in the Presidency College and he was beaten and tortured. Despite that, no further action was taken by the police. Therefore, Rajendran was constrained to file an application before this Court seeking for a direction for the action to be taken on his complaint.

6. Mainly based upon the report of SB CID and also on the affidavit by Rajendran giving the details of the torture and medical documents, this Court was constrained to direct registration of the case and investigation by the D.S.P., SB CID as suggested by the Public Prosecutor, especially the D.S.P., SB CID has earlier conducted enquiry into the allegations against Karunakaran and collected sufficient materials. This order was passed on 1.3.2001. While passing the orders, it was not brought to the notice of this Court that the post of D.S.P., SB CID has been abolished.

7. According to Mr. Martin, D.S.P., SB CID, Head Quarters, though the order was passed on 1.3.2001, he received the order copy only on 1.6.2001. Thereafter, he filed an application on 15.6.2001 before this Court to seek for modification on the ground that D.S.P., SB CID posts were abolished as per the orders dated 17.5.2000 and as per Rule 57 of the Manual of Instructions for State Special Branch, SB CID Officers are not to conduct the investigation of cases. Thus, it is clear that the order passed by this Court on 1.3.2001 which has been received by the SB CID, Nagapagttinam, was forwarded to the D.S.P., SB CID, Head Quarters, Chennai for further action.

8. Instead of registering the case as ordered by this Court and getting the suitable orders from the senior officers for handing over of the case for the investigation to the competent officers, Mr. Martin, D.S.P., SB CID thought it fit to file the application for modification intimating this Court that D.S.P., SB CID has no power to register and investigation. The very statement would indicate the tone and tenor of the officer concerned, viz-, Mr. Martin, D.S.P., SB CID, Head Quarters, Chennai, that since SB CID has no authority, they cannot comply with the order passed by this Court. This is unfortunate.

9. The application seeking for modification itself would amount to circumventing the order passed by this Court dated 1.3.2001. Abolition of the post of D.S.P., SB

CID at Nagapattinam would not prevent the SB CID, Chennai to hand over the case either to CB CID or to any other competent officer to investigate. Similarly, the Manual of Instructions and the Circular would not restrain this Court's powers from ordering for the registration and investigation by the SB CID police.

10. When a specific direction has been issued by this Court directing SB CID to investigate, the D.S.P., SB CID, Chennai cannot delay for the reasons best known to him and tell the Court that they are prevented from conducting the investigation in pursuance of the Government Order or the Manual of Instructions. The order has been passed on 1.3.2001. The application for modification was filed on 15.6.2001 and the application has not seen the light of the day for about three years. So, " the attitude of the D.S.P., SB CID by mere filing of the petition seeking for modification and keeping quiet for three years, would indicate that the police concerned have not cared to respect the orders dated 1.3.2001 passed by this Court.

11. Further, the first affidavit filed by Mr. Martin, D.S.P., SB CID with a prayer seeking for modification would not give clear particulars as to how the order could not be implemented. To the shock and surprise, the said affidavit has not even been attested by an Advocate. It shows that there is not only lack of interest on the part of the D.S.P., SB CID in complying with the order of this Court, but also lack of diligence in filing the affidavit with bereft of particulars even without attestation by the Advocate. It is nothing but a hurry-bury preparation and just a formal filing of the application, probably to find out a way to express excuse for non-implementation of the order dated 1.3.2001.

12. When Mr. Martin, D.S.P., SB CID, Head Quarters, Chennai, was asked for clear details and directed to file a better affidavit, the second affidavit was filed by him on 19.8.2004. Even in the said affidavit, it is stated that 31 posts of D.S.P., SB CID were abolished and on the date of the order i.e. 1.3.2001, there was no post of D.S.P., SB CID. As indicated above, this was not informed by the concerned Public Prosecutor to the Court on the date of the order dated 1.3.2001.

13. The D.S.P., SB CID, Head Quarters, Chennai, after receipt of the order, instead of filing a petition before this Court for modification or clarification, must have immediately obeyed the order by directing either the SB CID Inspector of Police of the District or the D.S.P., CB CID to register the case and then requested for clarification from this Court as to who has to conduct investigation in the light of the Manual of Instructions.

14. It is also quite unfortunate on the part of Mr. Martin, D.S.P., SB CID that he simply quoted Rule 57 of the Manual of Instructions and stated that was the ground for seeking for modification. When a specific direction has been given by this Court, it is for the SB CID either at Nagapattinam or at Head Quarters, Chennai, to immediately implement the orders by registering the case and to hand over the case to the competent officers to conduct investigation.

15. As a matter of fact, when the investigation was sought to be handed over to

C.B.I, in the main petition, this Court felt that it would be enough to hand over the investigation to SB CID as this Court reposed faith in the same, especially when the D.S.P., SB CID, Nagapattinam Mr. Sethunathan has already made a discreet enquiry into the allegations and found prima facie materials against Karunakaran, the then R.D.O. Unfortunately, it is to be stated that due respect has not been given to this Court by the officer concerned. Having felt agonised over the attitude of the D.S.P., SB CID, Mr. Martin, this Court passed an order on 9.7.2004 directing Mr. Martin and Mr. Sethunathan to give explanation as to why the order of this Court has not been complied with. Then only, Mr. Martin hurriedly obtained orders from ADGP, CB CID on 21.7.2004 and consequently, the case has been registered by the D.S.P., CB CID, Trichy on 21.7.2004.

16. It is seen from the additional affidavit filed by Rajendran in this matter that the investigation which is now being conducted by D.S.P. CB CID, Trichy, is not on proper line and Rajendran and witnesses were harshly treated and harassed by the presenting Investigating Officer. It is specifically alleged that he was being pressurized by the D.S.P., CB CID, Trichy, to withdraw the complaint or otherwise, he will be facing serious consequences.

17. It is also stated that on feeling aggrieved over the harassment at the hands of the D.S.P., CB CID, he presented a written complaint on 9.8.2004 to the Superintendent of Police, CB CID, Chennai and complained to him about the biased nature of the enquiry. Even thereafter, during the course of interrogation of the witnesses and the complainant, they were compelled to withdraw the complaint and to give a statement in such a way, so that they would drop the matter. This also was intimated through the written complaint to the Superintendent of Police, CB CID, Chennai on 2.9.2004.

18. Further, it is stated that the wife of Karunakaran, the accused, viz., Hema Karunakaran is working in the Police Department, who is currently working as ADSP (S.I.T.), Coimbatore and the present D.S.P, CB CID Miss Shanthi is a close friend and junior of the said Hema Karunakaran.

19. In the light of the serious allegations, this Court directed the present Investigating Officer, namely D.S.P., CB CID to file a report. Accordingly, the report has been filed and the case diary also has been produced.

20. On perusal of the case diary and the report, it is seen that the investigation has not been conducted in a proper line. There is no disposal for the petitions dated 9.8.2004 and 2.9.2004 presented by Rajendran to the Superintendent of Police regarding the harassment and biased attitude of the D.S.P., CB CID. There is no denial of the fact that the wife of Karunakaran, the accused, who is presently working as D.R.O. at Coimbatore, is Hema Karunakaran, who is currently working as ADSP (Law & Order), Coimbatore. So far, the accused Karunakaran has not been even interrogated. The audio cassette, which is an important material as stated by the complainant Rajendran, has also not been admittedly recovered from the accused.

21. In the light of the above things, this Court finds force in the contention raised by Rajendran through his detailed affidavit indicating that the investigation done by the present D.S.P., CB CID is a biased one.

22. The above things would certainly indicate that both Mr. Martin, D.S.P., SB CID, Head Quarters, Chennai and also the D.S.P., CB CID, the present Investigating Officer have not shown genuine interest in taking action against the accused through proper investigation. This Court is constrained to infer that the police officers concerned of the State have tried their level best from the beginning to shield the accused Karunakaran from the prosecution who happens to be the husband of the senior police officer. The irony is that when the direction was given to register F.I.R. against Karunakaran, he was working as R.D.O at Mayiladuthurai and after direction, he has been promoted and he is now presently working as D.R.O. in Coimbatore where his wife also is working as ADSP (S.I.T.).

23. Under these circumstances, there is no other alternative for this Court except to order transfer of investigation to C.B.I.

24. The Supreme Court in Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, , would hold that the decision to direct investigation by C.B.I. against a person can be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for investigation by C.B.I.

25. In Gudalure M.J. Cherian and Ors. v. Union of India and Ors., 1992 (1) Crimes 2, would hold that even after filing of the charge sheet on the investigation done by the local police, the High Court has got powers to direct C.B.I, to re-open the case and further investigate, to do justice between the parties and to instill confidence in the public mind.

26. The Supreme Court in R.S. Sodhi Vs. State of U.P. and others, , would hold that when the complaint is against the local police officers, it would be desirable to entrust the investigation to an independent agency like the C.B.I, so that all concerned including the relatives of the victim may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them.

27. These reasons given by the Supreme Court for transfer the investigation to C.B.I, would apply to the facts of the present case also in all fours.

28. Under those circumstances, it would be better to transfer the matter to C.B.I. So, the present Investigating Officer is directed to hand over the case diary and other records forthwith to C.B.I, the 6th respondent herein (The Director, C.B.I., New Delhi), who in turn will hand over the same to its competent officer to make further investigation and take appropriate action against the concerned and file

the final report within three months from the date of receipt of the order.

29. With these observations, the order dated 1.3.2001 is modified as indicated above and this petition is disposed of accordingly.